APPENDIX A

11-19-02
__/s/__FILED ____ENTERED
_____LODGED____RECEIVED

Nov 18 2002
At Seattle
Clerk U.S. District Court
Western District of Washington

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

RICHARD E. BUCKLEY,

Plaintiff,

v.

LUCILLE G. MEIS, Regional Chief Counsel, Office of General Counsel, Seattle Region X Social Security Administration, CHRISTINE R. HENDON, Staff Assistant, Office of the General Counsel Counsel, Seattle Region X, Social Security Administration, LISA DESOTO, General Counsel, Office of General Counsel, Social Security Administration, RANDOLPH W. GAINES, Deputy Chief Counsel, Office of the General Counsel, Social Security Administration, JO ANNE B. BARNHART, Commissioner of Social Security, BRIAN KIPNIS, Assistant United States Attorney, Office of the United States

No. C02-2051Z

ORDER

Attorney; and JOHN ASHCROFT, United States Attorney General,

Defendants.

This matter comes before the Court on Defendants' motion to Dismiss, docket n. 22.

The Court hereby GRANTS Defendants' motion to dismiss, docket no. 22.

The Court dismisses Plaintiff's Title VII claims for failure to exhaust his administrative remedies. Vinieratos v. United States Dep't of Air Force *ex rel* Aldridge, 939 F.3d 762, 768-69 (9th Cir. 1991).

The Court dismisses Plaintiff's constitutional claims under the First, Fourth, Sixth, and Fourteenth Amendments because 42 U.S.C. § 1983 does not provide a remedy against a federal official who violates federal law. See Cannon v. Univ. of Chicago, 441 U.S. 677; (sic) 700 n. 27, 99 S.Ct. 1946, 60 L. Ed. 2d 560 (1979) ("§ 1983 is assuredly not available for suits the United States"); Wheeldin v. Wheeler, 373 U.S. 647, 652, 83 S. Ct. 1441, 10 L. Ed. 2d 605 (1963) ("[N]o general statute making federal officers liable for acts committed 'under color' but in violation, of their federal authority has been passed."); Dale-Murphy v. Winston, 837 F.2d 348, 355 (9th Cir. 1987).

Furthermore, the Civil Service Reform Act (CSRA) precludes Plaintiff's *Bivens* claims. Bush v. Lucas, 462 U.S. 367, 103 S. Ct. 2404, 76 L. Ed. 2d 648 (1983); Schweiker v. Chilicky, 487 U.S. 412, 108 S. Ct. 2460, 101 L. Ed. 370 (1988); Saul v. United States, 928 F.2d. 829) (9th Cir. 1991). The CSRA is an elaborate remedial scheme that provides an administrative remedy to federal

employees who allege prohibited personnel practices. A federal employee must remedy violations through the Office of Special Counsel, which can petition the Merit System Protection Board. 5 U.S.C. §§ 1212, 1214, 1204; Saul F.2d at 833.

IT IS SO ORDERED.

DATED this 18th day of November, 2002.

/s/

THOMAS S. ZILLY

UNITED STATES DISTRICT JUDGE

APPENDIX B

FILED

SEP 23 2003

CATHY A. CATTERSON, CLERK
U.S.. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

RICHARD E. BUCKLEY

Plaintiff - Appellant,

v.

LUCILLE G. MEIS, Regional Chief COUNSEL, Office of General Counsel, Seattle Regional X, Social Security Administration, et al.,

Defendants - Appellees,

and,

RANDOLPH W. GAINES, Deputy Chief Counsel, Office of the General

No. 03-35003

C.D. No. CV-02-02051-TSZ

MEMORANDUM*

Counsel, Social Security Administration; et al.,

Defendants.

Appeal from the United States District Court
for the Western District of Washington
Thomas S. Zilly, District Judge, Presiding

*This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by Ninth Circuit Rule 36-3.

Submitted June 20, 2003**

Before: CHOY, SNEED, AND SKOPIL, Circuit Judges.

Pro se plaintiff-appellant Richard Buckley appeals the district court's dismissal of his claims under 42 U.S.C. § 1983, Title VII of the Civil Rights Act, and Bivens v. Six Unknown Named Agents of the Federal Bureau of Narcotics, 403 U.S. 388 (1971). On appeal, Buckley argues that his claims should not have been dismissed because: 1) it is possible to raise § 1983 claims against the federal government; 2) he substantially complied with the presentment requirements of Title VII; and 3) the Civil Service

** This panel unanimously finds this case suitable for decision without oral argument. See Fed.R.App.P. 34(a)(2). Appellant's request for oral argument, dated June 28, 2003, is therefore denied.

1 The lack of jurisdiction of a final judgement in this case is not a jurisdictional defect because the judgement was apparently inadvertently not entered and the district court decided all of the issues. See Bankers Trust Co. V. Mallis, 435 U.S. 381, 385-86 (1978).

Reform Act ("CSRA") does not prevent him from brining (sic) a Bivens claim. We have jurisdiction pursuant to 28 U.S.C. § 1291,[1] and we affirm.

I. Constitutional Claims

The dismissal of a § 1983 claim under Fed. R. Civ. P. 12(b)(6) is reviewed de novo. See Kirtley v. Rainey, 326 F.3d 1088, 1092 (9th Cir. 2003). Buckley apparently argues that, despite the general rule that § 1983 does not apply to federal officials, this court may still hold that he properly stated a claim under § 1983. This argument fails because this court's case law clearly establishes that a § 1983 action is not available to redress actions taken under the color of federal law. See, e.g., Flamingo Indus. (USA) Ltd. v. U.S. Postal Serv., 302 F.3d 985, 997 (9th Cir. 2002) (citing Billings v. United States, 57 F.3d 797, 801 (9th Cir. 1995)), cert. granted 123 S.Ct. 2215 (2003). The district court did not err in dismissing Buckley's § 1983 claims.

II. Title VII Claims.

The district court dismissed Buckley's Title VII claims on the ground that he failed to exhaust his administrative remedies because he filed his civil complaint before 180 days from the filing of his complaint with the Equal Employment Opportunities Commission ("EEOC"). We review the district court's dismissal of the Title VII claim for failure to exhaust administrative remedies do novo. See Vinieratos v. United States Dep't of Air Force, 939 F.2d 762, 768 (9th Cir. 1991. Buckley argues that the district court erred in dismissing the claims because, under Summatino v. United States, 255 F.3d 704, 708 (9th Cir. 2001), substantial complaince is sufficient to satisfy the time requirement

of 42 US.C. § 2000e-16(c). Even assuming Sommatino applies here, Buckley did not substantially comply with the time requirements by waiting only two days after his administrative filing to file this action in federal court. See Sommatino, 255 F.3d at 708 ("abandonment or failure to cooperate in the administrative process prevents exhaustion and precludes judicial review").

Buckley also argues that, because the 180-day period elapsed during the pendency of this case, the exhaustion issue is moot. However, the subsequent passage of the 180-day period does not excuse his failure to exhaust his administrative remedies; the complaint must still be dismissed. See Rivera v. United States Postal Serv., 830 F.2d 10-37, 1039 (9th Cir. 1987). The district court did not err in dismissing Buckley's Title VII claims.

III. Bivens Claims.

The district court dismissed Buckley's Bivens claims on the grounds that they are precluded by the CSRA. The district court's dismissal of a claim based on CSRA preclusion is reviewed de novo. See Orsay v. United States Dep't of Justice, 289 F.3d 1125, 1128 (9th Cir. 2002). Buckley contends that preclusion does not apply in this case because the CSRA does not provide him an adequate remedy. However, even assuming, *arguendo*, that this is true, the inadequacy of the statutory remedy is relevant to the issue of preclusion. See id. at 1128-29. Because the alleged unconstitutional conducts falls within the scope of the CSRA, the district court lacked jurisdiction to hear the Bivens claims based on the conduct. See Saul v. United States, 928 F.2d 829, 835-39 (9th Cir. 1991). Therefore, the district court did not err in dismissing Buckley's Bivens claims.

Any other argument not specifically addressed herein is deemed to be with merit.

AFFIRMED.

APPENDIX C

42 U.S.C.A. § 1983

§ 1983. Civil action for deprivation of rights

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress, except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.

(R.S. § 1979; Pub.L. 96-170, § 1, Dec. 29, 1979, 93 Stat. 1284; Pub.L. 104-317, Ttile III. § 309(c)), Oct. 19, 1996, 110 Stat. 3853.)